MESSRS YIN VOON & OOI & ANOR v. RIZAL SONG ABDULLAH & ANOR

COURT OF APPEAL, PUTRAJAYA
LIM YEE LAN JCA
NALLINI PATHMANATHAN JCA
BADARIAH SAHAMID JCA
[CIVIL APPEAL NO: B-02(NCVC) (W)-319-02-2014]
6 MAY 2015

CONTRACT: *Breach – Agreement – Sale and purchase agreement of properties – Legal firm appointed to prepare agreements and relevant documents – Registration of memorandum of transfer rejected due to absence of consent letter from Selangor Housing and Property Board – Purchaser instituted action against seller for breach of contract and solicitor and legal firm for professional negligence – Sale and purchase agreement declared null and void – Whether there was basis for action – Purchaser pursued suit when he had been compensated by terms of consent judgment – Whether an abuse of court process*

CIVIL PROCEDURE: *Abuse of process – Breach of sale and purchase agreement of properties – Parties entered into consent judgment agreeing on refund of full purchase price to purchaser – Contract deemed as null and void – Whether abuse of court process for purchaser to pursue suit when he had been compensated by terms of consent judgment*

The second respondent ('the third party') was a licensed developer and registered owner of a piece of land ('the said land') on which a housing project ('the housing project') comprising 621 units of low cost flats were built. The first respondent ('the plaintiff') agreed on the purchase price of RM613,000 for 18 units of the flats ('the properties') and had advanced a deposit of RM10,000 to Oriental Summit Industries ('the first defendant'). The first appellant ('the second defendant') was a legal firm appointed by the plaintiff to prepare sale and purchase agreements ('SPAs') and relevant documents required for the properties. After receiving confirmation from the third party that the properties were free of encumbrances, the second defendant forwarded the balance purchase price of RM551,700 to the first defendant's solicitors as stakeholders. The SPAs were dated 21 November 2007 and duly stamped on 23 November 2007. When the second defendant presented memorandums of transfers ('MOT') for registration, the Pejabat Tanah dan Galian Selangor rejected the registration of the MOT due to the absence of a consent letter from Lembaga Perumahan dan Hartanah Selangor. This prompted the plaintiff to institute an action against (i) the first defendant for breach of contract; and (ii) the second and third defendants for professional negligence. On the other hand, the second and third defendants (i) counterclaimed against the plaintiff for defamation; and (ii) filed an action

against the third party for indemnity and/or contribution in damages in respect of any liability of the second and third defendants to the plaintiff. By a consent judgment entered into between the plaintiff and the first, second and third defendants, it was, *inter alia*, agreed that the SPAs between the plaintiff and the first defendant were void and unenforceable. The first defendant refunded the full purchase price of RM613,000 and agreed to pay damages as well as costs to the plaintiff. The plaintiff agreed to deliver vacant possession of the properties on full payment of the stipulated amount mentioned above. The High Court allowed the plaintiff's claim against the second and third defendants; dismissed the first and second defendants' counterclaim; and dismissed the second and third defendants' third party notice. Hence, the present appeals.

Held (allowing second and third defendants' appeal with costs; dismissing plaintiff's appeal)
Per Badariah Sahamid JCA delivering the judgment of the court:

(1) The plaintiff's suit and the consent judgment were in respect of the same subject matter and same relief pleaded. The consent judgment had expressly provided that the SPAs were null and void. The effect of the declaration of nullity of the SPA in law was that the plaintiff was restored to the original position before the signing of the SPA. Pursuant to the terms of the consent judgment, the plaintiff had been awarded compensation by a full refund of the purchase price of the properties as well as agreed costs. The basis of the plaintiff's claim against the second and third defendants was for the alleged negligence in respect of the SPA. Since the SPA had been declared null and void, there was no basis for the plaintiff's suit against the second and third defendant. (paras 58, 62 & 63)

(2) It was an abuse of the process of the court for the plaintiff to pursue the suit when the plaintiff had been duly compensated by the terms of the consent judgment. It would certainly be unjust to allow the plaintiff to make a double claim for what was essentially the same cause of action against the same parties. There was also insufficient evidence of a breach of professional duty by the second and third defendants. (paras 64 & 65)

Bahasa Malaysia *Translation Of Headnotes*

Responden kedua ('pihak ketiga') merupakan pemaju berlesen dan pemilik berdaftar sebidang tanah ('tanah tersebut') di atas mana sebuah projek perumahan ('projek perumahan') yang terdiri daripada 621 unit rumah pangsa kos sederhana telah dibina. Responden pertama ('plaintif') bersetuju dengan harga belian RM613,000 bagi 18 unit rumah pangsa ('hartanah tersebut') dan mengemukakan deposit sebanyak RM10,000 kepada Oriental Summit Industries ('defendan pertama'). Perayu pertama ('defendan kedua')

adalah firma guaman yang melantik plaintif untuk menyediakan perjanjian jual beli ('PJB') dan dokumen-dokumen relevan yang diperlukan bagi hartanah-hartanah tersebut. Selepas menerima pengesahan daripada pihak ketiga bahawa hartanah-hartanah bebas daripada kekangan, defendan kedua mengemukakan baki harga belian sebanyak RM551,700 kepada peguamcara defendan pertama sebagai pemegang amanah. PJB ditarikhkan pada 21 November 2007 dan telah disetemkan pada 23 November 2007. Apabila defendan kedua mengemukakan memorandum pindah milik ('MOT') bagi pendaftaran, Pejabat Tanah dan Galian Selangor menolak pendaftaran MOT akibat ketiadaan surat kebenaran daripada Lembaga Perumahan dan Hartanah Selangor. Ini menyebabkan plaintif memulakan tindakan terhadap (i) defendan pertama atas pelanggaran kontrak; dan (ii) defendan kedua dan ketiga bagi kecuaian. Sebaliknya, defendan kedua dan ketiga (i) menuntut balas terhadap plaintif bagi fitnah; dan (ii) memfailkan tindakan terhadap pihak ketiga bagi indemniti dan/atau sumbangan ganti rugi berkenaan liabiliti defendan kedua dan ketiga kepada plaintif. Melalui penghakiman persetujuan yang dimasuki antara plaintif dan defendan pertama, kedua dan ketiga, dipersetujui, antara lain, bahawa PJB antara plaintif dan defendan pertama adalah tidak sah dan tidak boleh dikuatkuasakan. Defendan pertama memulangkan harga belian penuh sebanyak RM613,000 dan bersetuju untuk membayar ganti rugi dan juga kos kepada plaintif. Plaintif bersetuju untuk menyerahkan milikan kosong hartanah-hartanah berdasarkan bayaran penuh jumlah yang dinyatakan di atas. Mahkamah Tinggi membenarkan tuntutan plaintif terhadap defendan kedua dan ketiga; menolak tuntutan balas defendan pertama dan kedua; dan menolak notis pihak ketiga defendan kedua dan ketiga. Oleh itu, rayuan-rayuan ini.

Diputuskan (membenarkan rayuan defendan kedua dan ketiga dengan kos; menolak rayuan plaintif)

Oleh Badariah Sahamid HMR menyampaikan penghakiman mahkamah:

(1) Guaman dan penghakiman persetujuan adalah berkenaan hal perkara dan relif yang diplidkan yang sama. Penghakiman persetujuan telah dengan nyata memperuntukkan bahawa PJB tidak sah dan terbatal. Kesan pengisytiharan ketidaksahan PJB dalam undang-undang adalah bahawa plaintif dikembalikan kepada kedudukan asal sebelum meterainya PJB. Berikutan terma penghakiman persetujuan, plaintif telah diawardkan ganti rugi dengan pemulangan penuh harga belian hartanah-hartanah berserta kos yang dipersetujui. Asas tuntutan plaintif terhadap defendan kedua dan ketiga adalah bagi dakwaan kecuaian dalam PJB. Memandangkan PJB telah diisytiharkan tidak sah dan terbatal, tiada asas bagi guaman plaintif terhadap defendan kedua dan ketiga.

A **(2)** Adalah satu salahguna proses mahkamah bagi plaintif untuk meneruskan dengan guaman ini apabila plaintif telah dipampas sewajarnya dengan terma penghakiman persetujuan. Adalah tidak adil untuk membenarkan plaintif membuat tuntutan berganda bagi apa yang pada asasnya merupakan kausa tindakan yang sama terhadap pihak-pihak. Di samping
B itu, tidak terdapat keterangan yang mencukupi mengenai pelanggaran tugas profesional oleh defendan kedua dan ketiga.

Case(s) referred to:

Cornelius Jimbangan v. Joseph Crispin & Anor; Michael Persius Ubu (Third Party) [2009] 10 CLJ 87 HC ***(refd)***

C *Foo Fio Na v. Dr Soo Fook Mun & Anor [2002] 2 CLJ 11 FC* ***(refd)***

Lee Chee Kiang v. Johnson Tan Teck Seng & Anor [2011] 9 CLJ 498 HC ***(refd)***

Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur [2009] 1 LNS 1457 HC ***(foll)***

Shell Malaysia Trading Sdn Bhd v. How Boon Seng & Anor [2010] 1 LNS 612 HC ***(refd)***

Swamy v. Matthews & Anor [1967] 1 LNS 174 FC ***(refd)***

D *Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [2000] 5 CLJ 435 HC* ***(refd)***

Victor Cham & Anor v. Loh Bee Tuan [2006] 3 CLJ 770 CA ***(refd)***

Wing Fah Enterprise Sdn Bhd v. Matsushita Electronic Components (M) Sdn Bhd [2011] 8 CLJ 111 HC ***(refd)***

E **Legislation referred to:**

Housing Development (Control and Licensing) Act 1966, s. 22D(4)

For the appellant - Felicia Ho (Jane Pragasam with her); M/s Ho - Noecker & Pragasam

For the 1st respondent - Mohaji Selamat (Ismail Yahya with him); M/s Mohaji Hazury & Ismail

For the 2nd respondent - GS Kavitha; M/s CS Lew & Partners

F *[Appeal from High Court, Shah Alam; Civil Suit No: 22 NCVC-879-07-2012]*

Reported by Najib Tamby

JUDGMENT

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Badariah Sahamid JCA:

Introduction

[1] There are appeals before us from a decision of the High Court of Shah Alam in Civil Suit No. 22 NCVC-879-07-2012 on the plaintiff's claim and
H defendants' counterclaim.

[2] On 8 January 2014, the learned Judicial Commissioner had allowed a part of the plaintiff's claim against the second and third defendants for professional negligence in respect of the sale and purchase of 18 units of low
I cost flats, damages and costs.

[3] The learned Judicial Commissioner also dismissed the second and third defendants' counterclaim against the plaintiff for defamation. The second and third defendants' claim against the third party for indemnity or contribution to liability was also dismissed.

[4] The second and third defendants (first and second appellants) have appealed against the decision on the plaintiff's claim. The second and third defendants have also appealed on the dismissal of their counterclaim for defamation as well as their claim against the third party for indemnity or contribution.

[5] The plaintiff has also filed a notice of cross appeal against part of the decision of the High Court in rejecting the plaintiff's claim for:

(i) loss of future earnings on the use of the properties for the purpose of rental amounting to RM10 million;

(ii) loss of future profit from the re-sale of the properties;

(iii) general damages amounting to RM300,000; and

(iv) exemplary damages amounting to RM500,000.

Brief Background Facts

[6] The second respondent was a licensed developer and registered owner of a piece of land held under GRN 44070, Lot No. 40352 and GRN 44073, Lot No. 40357, Mukim Damansara, District of Petaling, Selangor. ("the said land") A housing project, known as Taman Bunga Negara ("the housing project") comprising six hundred and twenty one (621) units of low cost flats were built on the said land.

[7] The plaintiff agreed on the purchase price of RM613,000 for 18 units of flats of the housing project ("the properties"). On 5 April 2007, the plaintiff paid the earnest deposit of RM10,000 to Oriental Summit Industries Sdn Bhd ("the first defendant") for the purchase of the properties. The plaintiff and the first defendant had agreed that if approval was required for the transfer of the properties and the said approval is not obtained, the deposit would be refunded to the plaintiff without interest.

[8] The plaintiff appointed the second defendant as solicitors in respect of the sale and purchase transactions of the properties. At all material times, the third defendant was and is a partner of the second defendant. The second and third defendants prepared the sales and purchase agreements and relevant documents in respect of the properties.

[9] Subsequently, by a letter dated 19 September 2007, the second defendant wrote to the second respondent requesting confirmation of any restrictions on the transfer of the properties as well as any existing encumbrances on the properties.

[10] By a letter dated 24 September 2007, the second respondent responded to the second defendant's letter abovementioned, confirming that there were no restrictions in respect of transfer of the properties and that the properties were free of encumbrances. The second respondent had enclosed a copy of the Master Title to the said land as supporting documentation.

[11] On 29 October 2007, the second defendant forwarded the balance purchase price of RM551,700 to the first defendant's solicitors, Messrs. Pakhruddin & Partners as stakeholders. The sale and purchase agreements in respect of the properties were dated 21 November 2007 and duly stamped on 23 November 2007.

[12] By a letter dated 4 August 2008 from Lembaga Perumahan dan Hartanah Selangor ("LPHS") in reply to Messrs. Pakhruddin & Partners' letter of 26 March 2008, which letter was copied to the second defendant, it was stated that all transactions involving low cost properties , including the properties requires the consent of LPHS. The same letter also listed the requirements for eligibility to purchase low cost property.

[13] On 4 September 2009, individual strata titles for the properties were issued by Pejabat Tanah dan Galian Selangor ("PTGS").

[14] The second defendant advised the plaintiff to execute Memorandums of Transfers (MOT) for registration in favour of the plaintiff. On 30 December 2010, the second defendant presented the MOT to PTGS for registration. However, on 5 December 2011, PTGS rejected the registration of the MOT due to the absence of a consent letter from LPHS as required by its letter of 8 November 2011.

[15] Subsequently, by a writ of summons dated 12 July 2012, the plaintiff instituted an action against the defendants for the following:

(i) as against the first defendant, Oriental Summit Industries Sdn Bhd, for breach of contract.

(ii) as against the second defendant, Messrs. Yin Voon & Ooi, and the third defendant, Wong Yin Voon, for professional negligence.

[16] The second and third defendants instituted the following actions:

(i) a counterclaim in defamation against the plaintiff;

(ii) an action against Heavy Industries Valley Sdn Bhd. for indemnity and/or contribution in damages in respect of any liability of the second and third defendants to the plaintiff.

[17] By a consent judgment dated 7 November 2012 entered into between the plaintiff and the first, second and third defendants, it was *inter alia* agreed between the plaintiff and the first defendant that the sale and purchase agreement ("SPA") dated 21 November 2007 between the plaintiff and the first defendant, is void and unenforceable.

[18] The first defendant, without admission of liability, also agreed to refund to the plaintiff the full purchase price of RM613,000. The first defendant also agreed to pay damages as well as costs to the plaintiff.

[19] In addition, the plaintiff agreed to deliver vacant possession of the properties on full payment of the stipulated amount abovementioned.

Decision Of The High Court

[20] After trial of the suit, the learned Judicial Commissioner on 8 January 2014 had decided as follows:

(i) allowed the plaintiff's claim against the second and third defendants for professional negligence and damages and costs;

(ii) dismissed the first and second defendants' counterclaim for defamation against the plaintiff; and

(iii) dismissed the second and third defendants' third party notice for indemnity and contribution from the second respondent.

Appellants' Submissions On First Respondents' Claim

Abuse Of Process

[21] The appellants submit that the learned High Court Judge erred in not taking into consideration the consent judgment entered into between the plaintiff and the first, second and third defendants. Pursuant to the consent judgment, it was *inter alia* agreed between the plaintiff and the first defendant that the SPA dated 21 November 2007 between the plaintiff and the first defendant is void and unenforceable. As such the issue of damages does not arise. The appellants referred to the case of *Wing Fah Enterprise Sdn Bhd v. Matsushita Electronic Components (M) Sdn Bhd* [2011] 8 CLJ 111 as authority.

[22] Pursuant to the consent judgment, the first defendant had also agreed to refund to the plaintiff the full purchase price of RM613,000. In addition, the first defendant also agreed to pay damages as well as costs to the plaintiff.

[23] Since the first respondent has been compensated by the terms of the consent judgment, there are no existing losses suffered and consequently the first respondent's claim should be dismissed with costs.

[24] In the plaintiff's statement of claim, the same subject matter as well as the same relief had been pleaded. Thus, it is an abuse of the process for the first respondent to pursue the suit in light of the consent judgment between the parties.

[25] The appellants referred to the case of *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur* [2009] 1 LNS 1457; [2010] 8 MLJ 57 as authority for the proposition that it is an abuse

of the process of court if the plaintiff were to be permitted, "to relitigate their cause for the same relief and based on the same subject matter for which the plaintiffs have successfully obtained a judgment after a full trial".

[26] The appellants argue that applying the above principle to the instant case, since the first respondent had obtained a consent judgment in respect of the same subject matter and for the same relief, it would be an abuse of process to allow the first respondent to make a double claim in the suit.

[27] The appellants further submit that by the terms of the consent judgment the first respondent was paid damages and had relinquished his rights to claim for the other damages stipulated in para. 50(e) of the plaintiff's statement of claim.

[28] In addition, since the consent judgment was recorded with the first respondent and the appellants, the first respondent is precluded from proceeding with his claim against the appellants. As authority the appellants have cited the case of *Shell Malaysia Trading Sdn Bhd v. How Boon Seng & Anor* [2010] 1 LNS 612.

Professional Negligence

[29] The appellants submit further that the High Court Judge had erred in making a finding that the appellants had breached their professional duty of care to the first respondent.

[30] It is not disputed that the appellants had acted on behalf of the first respondent in the sale and purchase of the properties and thus owe the first respondent a duty of care. However, it is the appellants' contention that there has been no breach of a duty of care to the first respondent. At all material times, the appellants had performed their duties in accordance with the standard expected of a legal practitioner, as set out in the cases of *Lee Chee Kiang v. Johnson Tan Teck Seng & Anor* [2011] 9 CLJ 498 and *Foo Fio Na v. Dr. Soo Fook Mun & Anor* [2002] 2 CLJ 11.

[31] The appellants contend that the appellants had advised the first respondent on the requirement for prior consent from LPHS before the transfer of land can be completed. The appellants had taken measures to protect the interest of the first respondent by inserting a clause in the sale and purchase agreement (cl. 3 and item 12 paras. (ii) of the First Schedule) that the balance purchase price is to be paid to the first defendant upon receipt of the consent to transfer from the State Authority.

[32] In addition, by a letter dated 19 September 2007, the appellants had sought confirmation from the second respondent as to whether there was any restriction in interest imposed by the relevant authorities. The second respondent had responded by a letter dated 24 September 2007 that there is no restriction on the transfer of the properties and that the properties were free of encumbrances.

[33] In any event, the appellants contend that the obligation to obtain the consent of LPHS is that of the first defendant/vendor. Since the first defendant was represented by their own solicitors, Messrs Pakhruddin & Partners, it is their duty to obtain the consent from LPHS. The appellants had written numerous letters to Messrs Pakhruddin & Partners to enquire on the status of the application for consent and the application for waiver of consent.

[34] Thus, the appellants contend that the appellants had discharged their professional duties to the first respondent and are not liable for the failure of the first respondent to register the transfer for lack of the required consent from LPHS.

[35] The appellants further submit that even if the first respondent had suffered losses, such losses were not caused by the appellants but by the first respondent's own action. The first respondent had, contrary to the appellants' advice and terms of the SPA, paid the balance of the purchase price to the first defendant's solicitors in order to take early vacant possession of the properties and enjoy rental income even though the properties had yet to be transferred to the first respondent.

First Respondent's Reply

Consent Judgment

[36] The first respondent's written submission dated 16 October 2014 did not address the issue of consent judgment.

[37] In oral submissions, in reply to the appellants on the issue of consent judgment, the first respondent had distinguished the case of *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur* [2009] 1 LNS 1457; [2010] 8 MLJ 57, in that the case cited relate to a previous civil suit while the instant case relate to a consent judgment between the parties.

Professional Negligence

[38] The crux of the first respondent's submissions on this issue centred on the High Court's finding that the appellants had breached their professional duty of care to the first respondent.

[39] The first respondent submits that the facts demonstrate that all the elements of negligence had been proven: the appellants owe the first respondent a professional duty of care, the appellants had breached such duty of care, in consequence of which the first respondent had incurred losses.

[40] The breach of duty consists in the appellants' failure to verify with LPHS the status of the property before entering the sale and purchase agreement. The appellants were aware that there was a restriction in interest

on the properties and that a prior consent of LPHS was a prerequisite to registration. Notwithstanding the above, the appellants had advised the first respondent to present a Memorandum of Transfer to PTGS. Acting on the appellants' advice, the first respondent had made payment of the balance purchase price of RM551,700 to the first defendant *via* their solicitors Messrs Pakhruddin & Partners.

[41] The appellants had thereby breached their duty according to the standard of duty of care of a reasonably competent practitioner. Among the cases cited on the appropriate standard of care are the following: *Swamy v. Matthews & Anor* [1967] 1 LNS 174; [1968] 1 MLJ 139; *Victor Cham & Anor v. Loh Bee Tuan* [2006] 3 CLJ 770.

Appellant's Submissions On Counterclaim

[42] The appellants' counter claim comprises:

(i) an action in defamation against the first respondent

(ii) a third party notice for indemnity/contribution against the second respondent.

Defamation Against The First Respondent

[43] The appellants submit that the first respondent had committed defamation in that the first respondent/plaintiff's statement of claim which contain particulars of the appellants negligence were defamatory and had been published to non-intended parties.

[44] The appellants submit the defence of qualified privilege does not apply in the circumstances as the appellants had failed to serve the writ and statement of claim to the appellants personally, resulting in the said documents reaching parties other than the appellants.

Indemnity Against The Second Respondent

[45] The appellants submit that if the appellants were found liable for professional negligence, the appellants would be entitled to claim indemnity or contribution from the second respondent because of the second respondent's breach of duty. Pursuant to s. 22D(4) of Housing Development (Control and Licensing) Act 1966, the second respondent owes a duty of care to the first respondent as the sale and purchase of the properties was a sub-sale between the first respondent and the first defendant. The second respondent had breached its duty of care by a failure to verify the status of the property from LPHS and further by issuing a letter ('confirmation letter') dated 24 September 2007 to the appellants confirming *inter alia* that there are no restrictions to the transfer of the properties, and that the properties are free of encumbrances.

[46] The appellants submit that in reliance on the confirmation letter from the second respondent, the balance of the purchase price of the properties was paid by the appellants to the first defendant's solicitors, Messrs Pakhruddin & Partners.

First Respondents' Reply

Defamation

[47] The first respondent submits that the particulars of the alleged negligence of the appellants in the first respondent/plaintiff's statement of claim were not defamatory, as the appellants had failed to discharge the burden of proof. In particular, the appellants had failed to adduce evidence to support the allegation that the defamatory remarks contained in the statement of claim had been served on other than the intended parties.

[48] Even if found to be defamatory, the first respondent is entitled to rely on the defence of qualified privilege. The first respondent referred to the cases of *Cornelius Jimbangan v. Joseph Crispin & Anor; Michael Persius Ubu (Third Party)* [2009] 10 CLJ 87; [2009] MLJU 298 and *Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram* [2000] 5 CLJ 435; [2000] 5 MLJ 465 as authorities for the principle that words published in the course of judicial proceedings, even though defamatory are covered by qualified privilege.

Second Respondent's Reply

Indemnity

[49] The second respondent denied any liability to indemnify or contribute to any liability of the second and third defendants to the plaintiff.

[50] The second respondent had not breached its duty under s. 22D(4) of Housing Development (Control and Licensing) Act 1966 in that the information provided to the appellants that there was no restriction in interest on the properties, and that there were no encumbrances therein was premised on the Master Title which was enclosed together with the second respondent's letter of confirmation to the appellants dated 24 September 2007. Further, the confirmation of the status of the properties was in accordance with land search results dated 23 May 2007 conducted by the appellants on the properties and admitted to by the second appellant in cross-examination.

[51] The second respondent was also unaware of the requirement for prior consent from LPHS for registration of transfer of the properties.

[52] The second respondent is not liable for the alleged negligence of the appellants as the second respondent has no control or is in any way involved or responsible for the actions and advice given by the appellants to the first respondent in respect of the sale and purchase of the properties.

A **Findings And Decision**

[53] After consideration of the appellants' and respondents' submissions, we are of the view that there are merits in the appeal and unanimously allowed the appeal.

B **[54]** However, we dismissed the appellants' appeal on defamation and indemnity and affirmed the High Court's decision in dismissing the second and third defendants' counterclaim for defamation against the plaintiff, as well as the claim for contribution against the third party.

[55] In addition, we found no merits in the first respondent's appeal for C additional damages as pleaded in para. 50(e) of the first respondent/ plaintiff's statement of claim.

The grounds of our decision are stated below.

Consent Judgment

D **[56]** On 7 November 2012, a consent judgment (P26) was entered into between the plaintiff/first respondent, the first defendant/vendor, the second defendant/first appellant and the third defendant/second appellant.

[57] The question that arises and in our opinion is of crucial importance to the instant case is this: what is the effect of the consent judgment?

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[58] On a comparative examination of the particulars of the plaintiff's statement of claim with the terms of the consent judgment, it is clear that both the plaintiff's suit and the consent judgment are in respect of the same subject matter and the same relief pleaded.

F **[59]** The salient terms of the consent judgment are reproduced below:

> MAKA ADALAH DIPERINTAHKAN DAN DIARAHKAN secara persetujuan antara Plaintif dan Defendan Pertama bahawa:
>
> 1. Perjanjian Jual Beli bertarikh 21.11.2007 yang dimasuki oleh Plaintif dan Defendan Pertama untuk kesemua 18 hartanah tersebut adalah batal dan tidak sah;
>
> 2. Akibat Perjanjian Jual Beli bertarikh 21.11.2007 tersebut tidak sah dan gagal disempurnakan, maka Defendan Pertama tanpa pengakuan liabiliti akan memulangkan harga belian berjumlah RM613,000 yang telah diterima kepada Plaintif;

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H **[60]** In the grounds of judgment of the learned Judicial Commissioner, at para 24, reference was made to the consent judgment between the parties and the express provision therein that the SPA of 21 November 2007 is "batal dan tidak sah".

I

[61] The learned Judicial Commissioner made a finding that the effect of the invalidity is only to the extent of limiting the extent of the relief awarded to the plaintiff. Clearly, the learned Judicial Commissioner had made an error in law on the effect in law of a contract that has been declared null and void.

[62] The consent judgment had expressly provided that the SPA in respect of the properties to be null and void. The effect of the declaration of nullity of the SPA in law is that the plaintiff is restored to the original position before the signing of the SPA. Pursuant to the terms of the consent judgment, the plaintiff/first respondent had been awarded compensation by a full refund of the purchase price of the properties as well as agreed costs and damages.

[63] Since the basis of the first respondent's claim against the appellants is the alleged negligence in respect of the SPA and the SPA has been declared null and void, there is no basis for the first respondent's suit against the appellants. Likewise, the appeal of the appellants against the second respondent for indemnity premised on the void SPA is not tenable.

[64] In addition, we agree with the submission of the appellants and the cited authority of *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur* [2009] 1 LNS 1457; [2010] 8 MLJ 57, that it is an abuse of the process of court for the first respondent to pursue the suit when the first respondent had been duly compensated by the terms of the consent judgment. It would certainly be unjust to allow the first respondent to make a double claim for what is essentially the same cause of action against the same parties.

[65] In any event, on perusal of the evidence before us, we also find insufficient evidence of a breach of professional duty by the appellants.

[66] In any event, since the first respondent has been duly compensated by the consent judgment, the first respondent has not suffered any losses for which a cause of action will lie.

[67] In the premises, we allowed the appeal by the first and second appellants against the first respondent and awarded costs of RM10,000 to the appellants. We also awarded costs of RM5,000 to the second respondent on the appeal of the first and second appellants.

[68] In respect of the first respondent's cross appeal against the appellants on damages, we agree with the appellants' submission that in accepting the compensation, damages and costs stipulated in the terms of the consent judgment, the first respondent has forfeited his rights to the other heads of damages pleaded in para. 50(e) of the first respondent/plaintiff's statement of claim.